

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEROME CURRY,

Plaintiff,

-against-

KYOUNG S. KIM, CLINICAL PHYSICIAN; A.
SIMPSON, REGISTERED NURSE,

Defendants.

ORDER OF SERVICE

22-CV-04127 (PMH)

PHILIP M. HALPERN, United States District Judge:

Jerome Curry (“Plaintiff”), proceeding *pro se* and currently incarcerated at Green Haven Correctional Facility, brings this action under 42 U.S.C. § 1983, alleging that Defendants provided him with inadequate medical care at Green Haven.¹ The Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees, on May 25, 2022.² (Doc. 5). As set forth below, the Court directs the Clerk of Court to effect service on Defendants Kyoung S. Kim and A. Simpson.

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.³ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d

¹ By order dated July 11, 2022, Chief Judge Laura Taylor Swain directed Plaintiff to file an amended complaint. Plaintiff filed the Amended Complaint on September 7, 2022. (Doc. 8). The Amended Complaint is the operative pleading.

² Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. See 28 U.S.C. § 1915(b)(1).

³ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the amended complaint until the Court reviewed the amended complaint and ordered that summonses be issued. The Court, therefore, extends the time to serve until 90 days after the date summonses are issued.

Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants Kyoung S. Kim and A. Simpson through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the amended complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to issue summonses, complete the USM-285 forms with the addresses for Kyoung S. Kim and A. Simpson, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is directed to mail an information package to Plaintiff.

SO ORDERED:

Dated: White Plains, New York
September 14, 2022



PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Clinical Physician Kyoung S. Kim
Green Haven Correctional Facility
594 Route 216
Stormville, NY 12582
2. Nurse A. Simpson
Green Haven Correctional Facility
594 Route 216
Stormville, NY 12582